

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAY C. ROGERS,

Plaintiff,

v.

RANDY WEAVER,

Defendant.

CASE NO. 2:23-cv-01160-JCC-GJL

ORDER ON DISCOVERY MOTION

The District Court has referred this 42 U.S.C. § 1983 action to United States Magistrate Judge Grady J. Leupold. Currently pending before the Court is Plaintiff Ray C. Rogers' Motion regarding discovery. Dkt. 100. In his Motion, Plaintiff seeks sanctions against Defendant Weaver and his counsel for refusing to meet and confer about discovery, a court order compelling discovery, and the appointment of counsel to aid in discovery.¹ *Id.* In response to the Motion,

¹ The Court notes that several of Plaintiff's arguments indicate he prepared the instant Motion before reviewing the Report and Recommendation on Defendant's Motion for Summary Judgment. As this is not the first time Plaintiff has filed a Motion concerning an issue already addressed by the Court, it appears Plaintiff may be unnecessarily rushing to mail his filings so that they are received by the Court before the noting date or objection deadline. Thus, Plaintiff is advised that, as an incarcerated litigant without access to an e-filing system, he receives the benefit of the mailbox rule; this means, it is sufficient for Plaintiff to submit his filings to prison officials on the day they are due. *Douglas v. Noelle*, 567 F.3d 1103, 1107 (9th Cir. 2009).

1 Defense Counsel requests relief from the obligation to meet and confer with Plaintiff about
2 discovery, citing concerns that any discovery conference would quickly become contentious and
3 unlikely to resolve the parties' disputes. Dkt. 102.

4 To accelerate resolution of the outstanding issues, the Court will resolve the parties'
5 discovery disputes on the briefs. That is, the Court will examine each of Plaintiff's discovery
6 requests and, if relevant, order Defendant to show cause why he should not be required to
7 produce the requested discovery. Accordingly, the instant Motion is **GRANTED** insofar as
8 Plaintiff seeks judicial intervention in discovery, the Defendant is directed to **SHOW CAUSE**
9 why he should not produce certain discovery and **DENIED** on all other grounds.

10 I. LEGAL STANDARD

11 The Court strongly disfavors discovery motions and prefers that the parties resolve
12 discovery issues on their own. However, if the parties are unable to resolve a discovery dispute,
13 the requesting party may move for an order to compel. Fed. R. Civ. P. 37(a)(1). The party that
14 resists discovery has the burden to show why the discovery request should be denied.

15 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975).

16 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
17 party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1).
18 Materials need not be admissible in evidence to be discoverable; instead, the requirement is one
19 of relevance, meaning the requested information is "reasonably calculated to lead to the
20 discovery of admissible evidence." *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635
21 (9th Cir. 2005) (quoting *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir.
22 1992)). District courts have broad discretion in determining relevance. *Id.*

Determining whether the requested materials are relevant is only the first step of resolving a motion to compel. Pursuant to Rule 26(b)(1) of the Federal Rules of Civil Procedure, the Court should also consider the following when evaluating a disputed discovery request: “[1] the importance of the issues at stake in the action, [2] the amount in controversy, [3] the parties’ relative access to relevant information, [4] the parties’ resources, [5] the importance of the discovery in resolving the issues, and [6] whether the burden or expense of the proposed discovery outweighs its likely benefit.” *Id.* The Court next looks to Rule 26(b)(2)(C), which limits the production of otherwise discoverable materials upon a determination that: “(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).” Fed. R. Civ. P. 26(b)(2)(C)(i)–(iii). Ultimately, the district court’s discretion to permit or deny discovery is substantial. *See Hallett v. Morgan*, 296 F.3d 732, 751 (2002) (“[A district court’s] decision to deny discovery will not be disturbed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant.”).

Generally, when the Court grants a motion to compel discovery, it will also impose sanctions in the form of “reasonable expenses” assessed against the party and attorney whose conduct necessitated the discovery motion. Fed. R. Civ. P. 37(a)(5)(A). The presumption in favor of monetary sanctions serves as a deterrent by “discouraging unnecessary involvement by the court in discovery.” *Marquis v. Chrysler Corp.*, 577 F.2d 624, 642 (9th Cir. 1978). It follows that sanctions are not required in situations where deterrence is unnecessary or unjust; the award of expenses is prohibited where the movant did not make a good faith attempt to confer, the

1 nonmovant's nondisclosure was substantially justified, or other circumstances make an award
2 unjust. Fed. R. Civ. P. 37(a)(5)(A)(i)–(iii).

3 II. DISCUSSION

4 The sole claim remaining in this action is Plaintiff's First Amendment retaliation claim
5 alleging that Defendant Weaver placed him in the visitation room at King County Jail ("KCJ") in
6 retaliation for raising informal grievances and attempting to submit a formal grievance about
7 KCJ's mail policies and procedures. *See* Dkts. 98, 114. To succeed on his claim, Plaintiff must
8 prove the following elements: (1) Defendant Weaver is a state actor who acted against Plaintiff,
9 (2) because of (3) his protected conduct; (4) Defendant Weaver's action was adverse in that,
10 viewed objectively, the action would chill an inmate's exercise of their First Amendment rights;
11 and, finally, (5) Defendant Weaver's adverse action did not reasonably advance a legitimate
12 correctional goal. *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (citing *Rhodes v.*
13 *Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005)).

14 The Court views Plaintiff's Motion as requesting production of the following materials in
15 relation to that claim: (A) copies of various disciplinary policies at KCJ, (B) copies of KCJ
16 policies about grievance pick-ups and procedures, (C) photographs and measurements of KCJ's
17 visitation room, (D) official statements or testimony provided by Defendant Weaver to any
18 agency or office about the events at issue, (E) any incident report created with respect to the
19 events at issue, (F) Defendant Weaver's disciplinary record, and (G) any video footage of the
20 events at issue. Dkt. 100 at 3–4.

21 Except for the last two of these requests, Defendant Weaver does not explain why
22 Plaintiff's discovery requests should be denied. Dkt. 102 at 4. Instead, Defendant Weaver
23 broadly argues that, because Plaintiff's Motion ignores some of his prior discovery responses,
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1 the Court should treat all requests to compel discovery as improperly filed and decline to
2 consider them. *Id.* In so arguing, Defendant Weaver overlooks that it is his burden to oppose
3 discovery once the relevance requirement is met. *See Bryant v. Ochoa*, No. 07-cv-200-JM-PCL,
4 2009 WL 1390794, at *1 (S.D. Cal. May 14, 2009) (“[T]he party opposing discovery has the
5 burden of showing that the discovery should be prohibited, and the burden of clarifying,
6 explaining, or supporting its objections.”). Defendant Weaver may satisfy this burden by
7 showing that he has fully responded or properly objected to a disputed discovery request. *Id.*
8 Simply asserting that Plaintiff has ignored some of the Defendant’s discovery responses does not
9 carry this burden.

10 Ordinarily, Plaintiff would also be required to demonstrate that he conferred, or made a
11 good faith effort to confer, with the Defendant about discovery before seeking a court order
12 compelling discovery. *See Fed. R. Civ. P. 37; Local Rules W.D. Wash. LCR 37.* In other words,
13 a court order compelling discovery is ordinarily only appropriate upon the movant’s showing
14 that the parties reached an impasse on a substantive issue. *See Beasley v. State Farm Mut. Auto.*
15 *Ins. Co.*, 2014 WL 1268709, at *3 (W.D. Wash. Mar. 25, 2014); *Branch Banking & Tr. Co. v.*
16 *Pebble Creek Plaza, LLC*, 2013 WL 12176465, at *1 (D. Nev. July 26, 2013) (judicial
17 intervention is appropriate only when “informal negotiations have reached an impasse on the
18 substantive issue in dispute”). However, in responding to the instant Motion, Defendant Weaver
19 seeks relief from his obligation to meet and confer with Plaintiff. Dkt. 102. In support, the
20 Defendant submits evidence demonstrating his genuine concern that a discovery conference
21 would be counterproductive and serve only to exacerbate relations between the parties. Dkt. 103.
22 Given Defendant’s evidence (and Plaintiff’s reported efforts in attempting to meet and confer),
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1 the Court finds it unnecessary to require a discovery conference before addressing the instant
2 Motion.

3 Accordingly, the Court will examine each of Plaintiff's discovery requests and, if a
4 request is found relevant, the Court will further consider the propriety of requiring discovery in
5 accord with Rules 26(b)(1) and 26(b)(2)(C) of the Federal Rules of Civil Procedure. If a request
6 is relevant and production appears proper, the Court will direct Defendant Weaver to show cause
7 why he should not be required to produce discovery in response to a specific request.

8 **A. KCJ Disciplinary Policies**

9 Plaintiff first requests copies of any disciplinary policies at KCJ concerning the
10 following: "detainees['] legal rights," "staff documenting disciplinary incidents," "use of visitor
11 booth," and "detainees being removed from a unit for disciplinary reasons." Dkt. 100 at 3–4.

12 These requests are relevant to the central dispute over whether Plaintiff was punished in
13 retaliation for engaging in protected conduct as opposed to some other legitimate disciplinary
14 reason. Plaintiff maintains that Defendant Weaver acted with improper purpose and seeks to
15 prove his theory by demonstrating that Defendant Weaver did not actually comply with KCJ's
16 disciplinary policies. *See* Dkt. 88 at 10; Dkt. 92 at 7. Though failure to follow a disciplinary
17 policy is not dispositive of a constitutional violation, it is at least relevant to the Defendant's
18 knowledge and motive. Thus, the relevance requirement is satisfied for this request.

19 As for the propriety of requiring discovery of these policies, the Court notes that
20 Defendant has submitted copies of various KCJ policies at different times in this case. *See e.g.*,
21 Dkt. 79-7. Thus, Defendant Weaver's ready access to KCJ policies and the apparent ease in
22 producing such policies support production on this request. *See* Fed. R. Civ. P. 26(b)(1). As such,
23 Defendant Weaver is directed to **SHOW CAUSE** with respect to this discovery request.

1 **B. KCJ Grievance Pick-up Policy**

2 Plaintiff also requests copies of any KCJ policy regarding the process for picking up
3 inmate grievances and the “process and procedure regarding the length of time for staff to
4 respond [to inmate grievances].” Dkt. 100 at 3.

5 Starting with the KCJ policies regarding grievance pick-ups, these materials are relevant
6 to Plaintiff’s claim. Plaintiff maintains that he was punished after appropriately attempting to
7 submit a formal grievance to Defendant Weaver. Dkts. 88, 92. On the other hand, Defendant
8 Weaver states that he was not required to accept Plaintiff’s formal grievance because he was not
9 the sergeant assigned to Plaintiff’s unit. Dkt. 79 at 9. Thus, the existence of a policy supporting
10 or rebutting either side is relevant to the underlying dispute. In addition, Defendant Weaver’s
11 access to and his ability to easily produce copies of KCJ policies support production on this
12 aspect of Plaintiff’s discovery request.² See Fed. R. Civ. P. 26(b)(1). As such, Defendant Weaver
13 is directed to **SHOW CAUSE** with respect to this discovery request.

14 By contrast, Plaintiff’s request for KCJ policies governing responses to grievances does
15 not satisfy the relevance test. Plaintiff fails to show how policies about responding to formal
16 grievances would have any bearing on whether he was retaliated against for raising informal
17 complaints and unsuccessfully attempting to submit a formal grievance. As this aspect of
18 Plaintiff’s request is not relevant to his claim, the Court will not order production or require the
19 Defendant to show cause on this aspect of Plaintiff’s request.

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² The Court notes that, in a recent filing, Plaintiff quoted from what appeared to be a KCJ Policy regarding
24 grievance pick-ups. Dkt. 107. As indicated above, the Defendant may demonstrate an order compelling discovery is
not required by showing he has fully complied with this discovery request.

1 **C. Photographs and Measurements of KCJ's Visitation Room**

2 Plaintiff next requests photographs and measurements of KCJ's visitation room. Dkt. 100
3 at 4. The alleged discomfort of being confined in the visitation room is directly relevant to the
4 adverse action element of Plaintiff's claim. Plaintiff must be able to demonstrate that, from an
5 objective point of view, being placed in the visitation room would have deterred an inmate from
6 engaging in protected activity. Thus, the relevance requirement for this request is easily met.

7 As for the propriety of requiring production of these materials, it appears Defendant
8 Weaver remains an employee at KCJ and can access the visitation room with relative ease, which
9 support production on this request. *See* Fed. R. Civ. P. 26(b)(1). Thus, Defendant Weaver is
10 directed to **SHOW CAUSE** with respect to this discovery request.

11 **D. Defendant Weaver's Prior Statements or Testimony**

12 Next, Plaintiff makes a routine discovery request for any prior statements or testimony
13 that Defendant Weaver has given about the events underlying this case. Dkt. 100 at 4. The
14 relevance of this request is readily apparent as is Defendant Weaver's superior access to these
15 materials. *See* Fed. R. Civ. P. 26(b)(1). It is therefore appropriate to require the Defendant to
16 **SHOW CAUSE** with respect to this request.

17 **E. Incident Reports**

18 Plaintiff requests production of any incident reports created in connection with
19 circumstances underlying this suit. Dkt. 100 at 3. Whether an incident report was created in
20 connection with Plaintiff's punishment is highly relevant to his theory that he was punished for
21 engaging in protected conduct rather than for engaging in the sort of unacceptable conduct that
22 one would expect to be captured in an incident report. Given the relevance of this request and the
23 ease with which Defendant Weaver would be able to produce any incident reports created by him
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1 or his colleagues, the Court finds it appropriate to require the Defendant to **SHOW CAUSE** with
2 respect to this request. *See* Fed. R. Civ. P. 26(b)(1).

3 **F. Defendant Weaver's Disciplinary Records and Video Footage**

4 Finally, Plaintiff requests copies of Defendant Weaver's disciplinary records and any
5 video footage capturing the events at issue. Dkt. 100 at 3–4. Even assuming these requests
6 satisfied relevance, Defendant Weaver has successfully demonstrated that a court order
7 compelling production of these materials would be inappropriate. Defendant Weaver previously
8 objected to Plaintiff's prior requests for production of these materials and, notwithstanding his
9 objections, the Defendant informed Plaintiff that he has no disciplinary record and that no video
10 footage exists. Dkt. 102 at 4 (referencing Dkt. 96-1 at 9 (Defendant Weaver's Response to
11 Plaintiff First Set of Requests for Production)). Because there are no disciplinary record or video
12 footage to produce, the Court will not compel discovery or direct Defendant to show cause on
13 these requests.

14 **G. Overview of Required Discovery Responses**

15 For the reasons explained above, Defendant Weaver is directed to **SHOW CAUSE** why
16 he should not be required to produce discovery in response to the following requests:

- 17 (1) Any KCJ disciplinary policies regarding (a) the rights of pretrial detainees,
18 (b) the procedures for documenting disciplinary actions, and (c) removing
19 detainees from their units and placing them in the visitation room as
20 punishment;
- 21 (2) Any KCJ policies governing procedures for inmate grievance pick-ups;
- 22 (3) Photographs and dimensions of the visitation room at KCJ;
- 23 (4) Any incident reports or logs concerning Plaintiff's conduct and/or the
24 punishment imposed on July 26, 2023; and

1 (5) Any official statements or testimony provided by Defendant Weaver to any
2 agency of office concerning the events occurring on July 26, 2023.

3 Accordingly, Plaintiff's request for judicial intervention in discovery is **GRANTED** as to
4 the above-listed discovery requests and **DENIED** on all other discovery requests.

5 **H. Sanctions and Other Requested Relief**

6 In addition to a court order compelling discovery, Plaintiff requests that sanctions be
7 imposed against Defendant Weaver for refusing to meet and confer. Dkt. 100 at 1, 5. As
8 addressed above, Defendant Weaver submitted competent evidence demonstrating his genuine
9 concern about the futility of participating in a discovery conference with the Plaintiff. Thus,
10 Defendant Weaver's refusal to meet and confer is not grounds for sanctions. In addition, the
11 Court declined to compel discovery on several of Plaintiff's request and has yet to determine
12 whether such an order is required on his other requests. Therefore, Plaintiff's request for
13 sanctions is **DENIED**.

14 Finally, Plaintiff requests that the Court appoint him voluntary counsel to aid in resolving
15 his discovery disputes with the Defendant. Dkt. 100 at 5. As Plaintiff has successfully
16 demonstrated the need for a judicial intervention in discovery without counsel, this request is
17 also **DENIED**.³

18 **III. CONCLUSION**

19 Based on the foregoing discussion, the instant Motion (Dkt. 100) is **GRANTED IN**
20 **PART** and **DENIED IN PART**. Specifically, Defendant Weaver is **ORDERED** to **SHOW**

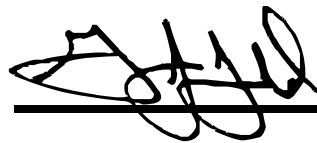
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23 ³ By denying this limited request for counsel to aid in discovery, the Court does not resolve Plaintiff's pending
24 Motion for Appointment of Counsel (Dkt. 107), which will be addressed in a separate order.

1 **CAUSE** by **October 28, 2024**, why he should not be required to produce the following
2 discovery:

- 3 (1) Any KCJ disciplinary policies regarding (a) the rights of pretrial detainees, (b) the
4 procedures for documenting disciplinary actions, and (c) removing detainees from
5 their units and placing them in the visitation room as punishment;
- 6 (2) Any KCJ policies governing procedures for inmate grievance pick-ups;
- 7 (3) Photographs and dimensions of the visitation room at KCJ;
- 8 (4) Any incident reports or logs concerning Plaintiff's conduct and/or the punishment
9 imposed on July 26, 2023; and
- 10 (5) Any official statements or testimony provided by Defendant Weaver to any
11 agency of office concerning the events occurring on July 26, 2023.

12 Defendant Weaver may comply with this Show Cause Order by demonstrating the above
13 materials have been provided to Plaintiff by the stated deadline. Plaintiff's other requests for
14 relief are **DENIED**.

15 Dated this 25th day of September, 2024.

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18 Grady J. Leupold
19 United States Magistrate Judge
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